

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 4:08-CR-525 CAS
)	
CARLO M. HOLMES,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on defendant Carlo M. Holmes' Motion for Extension of Time for Filing Notice of Appeal. The motion will be granted for good cause shown.

Following trial by jury, defendant was found guilty of one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), and one count of possession with intent to distribute more than five grams of a mixture or substance containing cocaine base in violation of 21 U.S.C. § 841(a)(1). Defendant was sentenced on June 11, 2009 to the custody of the Bureau of Prisons for a term of 120 months incarceration, to be followed by 8 years of supervised release. The Judgment was entered on the criminal docket on July 1, 2009. See Fed. R. App. P. 4(b)(6). Holmes' motion was filed on July 16, 2009. See Fed. R. App. P. 4(b)(4).

The procedure for filing a notice of appeal by a defendant in a criminal case is governed by Federal Rule of Appellate Procedure 4(b), which states in pertinent part:

(1) Time for Filing a Notice of Appeal

- (A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 10 days after the later of:
- (i) the entry of either the judgment or the order being appealed; or
 - (ii) the filing of the government's notice of appeal.

Fed. R. App. P. 4(b)(1).

With respect to extensions of time to appeal, Federal Rule of Appellate Procedure 4(b)(4) provides:

(4) Motion for Extension of Time. Upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

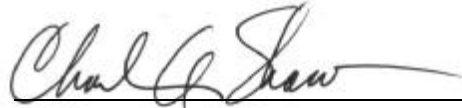
Fed. R. App. P. 4(b)(4). Under Rule 4(b), a district court may consider a defendant’s motion for an extension of time to file a notice of appeal only if it is filed “no later than forty days after judgment.” United States v. Cheek, 761 F.2d 461, 462 (8th Cir. 1985). After the “forty day period expires, there is nothing that either a district court or a court of appeals can do to extend the time for filing a notice of appeal.” Id.

Under Rule 4(b), the Court has jurisdiction to consider defendant’s motion for an extension of time. The motion states that defendant’s counsel has been in trial in state court every week since the date of sentencing, and requests an additional thirty days to complete and file the notice of appeal. The motion will be granted for good cause shown, and defendant will be ordered to file his notice of appeal no later than August 14, 2009. See Fed. R. App. P. 4(b)(4).

Accordingly,

IT IS HEREBY ORDERED that defendant Carlo M. Holmes’ Motion for Extension of Time for Filing Notice of Appeal is **GRANTED**. [Doc. 52]

IT IS FURTHER ORDERED that defendant's Notice of Appeal shall be filed no later than
August 14, 2009.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 17th day of July, 2009.